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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,996	07/29/2003	Shirley M. Benson	3799	8556
22474	7590	01/24/2006	EXAMINER	
DOUGHERTY CLEMENTS 1901 ROXBOROUGH ROAD SUITE 300 CHARLOTTE, NC 28211			AGARWAL, MANUJ	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/629,996	Applicant(s) BENSON, SHIRLEY M.	
	Examiner Manuj Agarwal	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 05 December 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)          |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. <u>1-3-06</u>  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the (a) handlebar, molded rubber handgrip, plastic handgrip, and ball manifestations of the handhold, and (b) cable or chain manifestations of the elongated cord must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The specification is objected to under U.S.C 112, first paragraph for failing to provide an adequate written description of the invention. The positioning of the torso at an angle that opens the birth canal is not disclosed in the specification.

### ***Claim Objections***

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 30-39 have been renumbered to claims 29-37 and their dependencies have been adjusted accordingly. For example, claim 31 is now claim 30, and depends on claim 29.

Claims 33-37 recite the limitation "the method." There is insufficient antecedent basis for this limitation in the claim. These claims refer to the "method of claim 29." Claim 29 is a system claim and does not contain a method.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 31 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification, as mentioned above, in such a way as to

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reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The positioning of the torso at an angle that opens the birth canal is not disclosed in the specification.

Claims 30 and 31 are rejected under 112 first paragraph for failing to further limit the system of claim 29. These claims merely describe functional intended use language. Claiming "in the event that the user suddenly and inadvertently release the birthing aide," "applying a pulling force" and "adducting the user's torso" all describe actions during use and fail to further limit the structure of the previous claim.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 21 recites the limitation "said handhold knob." There is insufficient antecedent basis for this limitation in the claim. A handhold, not a handhold knob is mentioned earlier in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 29-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Balne (3,068,002).

In Figure 7, Balne shows a device capable of functioning as a birthing aide to reduce the duration of the active labor process. Although the claimed functionality is not

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disclosed in the reference, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). The birthing aide consists of an elongated cord (12'), an end attached to a stationary object, and an end terminating in a pair of handle members (16'). The handle members are fastened to the end of rope (12') by rope 14' by means of loop 79, which forms loops 80 upon attachment, hereon referred to as the mother's handhold unit. The length of rope 12' can be adjusted by disengaging the lock in box apparatus 84.

Regarding claim 29, the terminus of rope 12' comprises a mother's end comprising a handhold knob (loop 80), a pair of v-arms 14' terminating in a wrist loop 16'. The remaining terminus comprises the aide's end and comprises at least one loop (see fig 10). This loop is attached to element 84 which is secured to a surface, an arrangement that will provide resistance to the pulling force on the opposing end. A user is capable of inserting her wrists into said wrist loops, grasping the birthing aide in the vicinity of said handhold knob and pulling against the source of resistance. This motion will tighten the user's abdominal muscles and effectively increase her uterine contractions.

Regarding claim 30, the said wrist loops will provide the said function because of the sufficient length of v-arm 14'.

Regarding claim 31, the pulling of rope 12' from the stationary object will provide an equal but opposite pulling force away from the mother. The identical positioning of the torso at an angle to open the birth canal will be facilitated by this arrangement.

Regarding claims 32-34, the mother's end and the aide's end are both made from the same rope material as the elongated cord 12'(col 2. lines 9, 12). Furthermore, handhold 80 is also made from this rope material and is inherently braided. Handhold 80 exists as a knob, for it is a sufficiently rounded protuberance.

Regarding claim 35, a rope can be made from either natural or synthetic fibers, or a mixture of the two. Therefore the rope of Balne must fall into one of these categories.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freymann (2,009,655) in view of Balne.

Freymann discloses an obstetric device and teaches a method for lessening the duration of the active labor and pushing stages of childbirth. The device comprises an elongated cord 12 having a mother's end 11 comprising a handhold 5 and an aid's end attached to a stationary object. Wrist loops 6 are provided as well. A user's wrist is

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inserted into the said wrist loops and the handhold is grasped. When a user pulls on this elongated cord via the handhold, the stationary object will exert an equal but opposite force, effectively increasing the contractions of the uterus and abdominal muscles.

Regarding claims 21 and 22, Freymann lacks a pair of v-arms which terminate in a wrist loop. Such structure is taught by Balne who discloses a device capable of performing the recited function. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Fig 1 of Balne shows an apparatus that comprises said v-arms 14 terminating in wrist loops 16, as well as an aid's end 56, 32. It would have been obvious to one of ordinary skill at the time the invention was made to join cord 12 of Freymann into a pair of rope v-arms as taught by Balne so that pulling forces would be uniform on one central cord.

Regarding claim 23, the handhold of Freymann is a handlebar (see fig 4).

Regarding claims 24 and 25, the elongated cord 12 of Balne is made of rope (col 2 line 9). It would have been obvious to one of ordinary skill at the time the invention was made to provide the apparatus of Freymann with a cord made from rope in order to afford the tensile advantages associated with rope.

Regarding claim 26, a rope can be made from either natural or synthetic fibers, or a mixture of the two. Therefore the rope of Balne must fall into one of these categories.



Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Freymann in view of Balne as applied to claims 21-26 as applied above, and in further view of Davidson (5,674,159).

Both Freymann and Balne lack rope made of synthetic fiber selected from listed group. Davidson discloses a device comprising two wrist loops 100, an elongated rope 200, a handgrip 300 and an aide's end 400. On page 8, line 44 Davidson details the specification of his rope and states that it is to be manufactured from polypropylene, a form of polyolefin and a synthetic fiber (see logic in previous correspondence). It would have been obvious to one of ordinary skill at the time the invention was made to provide the birthing device of Balne with a rope made of the synthetic fiber polyolefin to decrease production cost and time.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Freymann in view of Balne as applied to claims 21-26 above, and in further view of Goodwin (2,951,702).

Both Freymann and Balne lack rope made from natural fiber selected from the listed group. Goodwin discloses a device comprising a handhold 34, elongated cord 30 and a looped aide's end 20 (see fig 3). Elongated cord 30 is said to be made of cotton rope, a natural fiber. It would have been obvious to one of ordinary skill at the time the invention was made to provide the birthing device of Freymann in view of Balne with a rope made of the natural fiber cotton to provide cotton's unique properties of strength, durability, and absorbency.

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Balne in view of Davidson (5,674,159).

Balne lacks rope made of synthetic fiber selected from listed group. Davidson discloses rope made from polypropylene, a form of polyolefin and a synthetic fiber (see logic in previous correspondence). It would have been obvious to one of ordinary skill at the time the invention was made to provide the birthing device of Balne with a rope made of the synthetic fiber polyolefin to decrease production cost and time.

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Balne in view of Goodwin (2,951,702).

Balne lacks rope made from natural fiber selected from the listed group. Goodwin discloses an elongated cord 30 made of cotton rope, a natural fiber. It would have been obvious to one of ordinary skill at the time the invention was made to provide the birthing device of Balne with a rope made of the natural fiber cotton to provide cotton's unique properties of strength, durability, and absorbency.

### ***Response to Amendment***

The drawings remain objected to because they still lack subject matter claimed in the apparatus claims.

The Balne reference was primarily relied upon in the first office action. Balne discloses the claimed structural limitations of the disclosed invention. Although his apparatus is intended to function as an exercise device, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus

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satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

The fact that Balne does not intend to use his device to aide birthing does not disregard its ability to perform such a function. Furthermore, the specification stated that the apparatus imparts a motion on the pregnant user similar to that of a crunch to increase inter-abdominal pressure. The crunch is a well-known exercise for the conditioning of the abdominal muscles.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manuj Agarwal whose telephone number is (571) 272-4368. The examiner can normally be reached on Mon to Fri 9:00 AM 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen K. Cronin can be reached on (571) 272-4536. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Manuj Agarwal  
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MA



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